IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5374 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PADAM KISHANCHAND NEPALI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5374 of 2005

MS KRISHNA U MISHRA for Petitioner No. 1

RULE SERVED for Respondent No. 1-2

GOVERNMENT PLEADER for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 12/05/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of

the Constitution of India has been filed by the petitioner detenue PADAM KISHANCHAND NEPALI, challenging his detention in pursuance of the order passed against him by Police Commissioner, Surat City, on 11th of January, 2005, in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti-social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as dangerous person from 11th of January, 2005.

2. The grounds of detention as placed on record, reveal that the Detaining Authority took into consideration two types of materials to arrive at the subjective satisfaction. Firstly, four crimes registered against the petitioner for the offences punishable under Sections 379 and 114 of the Indian Penal Code and secondly two in-camera statements as recorded by the Sponsoring Authority on 5th of January, 2005 and verified by the Detaining Authority on 8th of January, 2005. The identity of the witnesses is not disclosed by the Detaining Authority, claiming privilege under Section 9(2) of the PASA Act.

3. Out of four crimes, first crime came to be registered against the petitioner before Pandesara Police Station on 13th October, 2004 and it was alleged that the petitioner was involved in theft of Hero Honda Splendor Motor Cycle. Remaining other three cases were registered against the petitioner before Udhna Police Station on 25th of August, 2004, on 15th of February, 2004 and on 29th of October, 2003. In the cases shown at serial nos. 2 and 4, it was alleged that the petitioner was involved in the theft of Hero Honda Splendor Motor Cycle while in case shown at serial no.3, it was alleged that the petitioner was involved in the theft of one Bajaj Pulsar Motor Cycle. The Detaining Authority took into consideration exhaustively and thoroughly the investigation papers in all four cases and came to the conclusion that the petitioner was habitual offender of committing offences of thefts.

4. Out of two in-camera statements first witness referred to an incident of 18th September, 2004. At about 6=00 p.m. when the witness was present at his place of business, the petitioner alongwith his accomplices approached the witness and stated that all of them intended to go to UBHARAT for a picnic and they demanded Rs.1,000/- from the witness. The witness refused and on refusal he was beaten up by the petitioner and his accomplices in the public place. The crowd was gathered but on account of fear and terror of the

petitioner and his accomplices the crowd was dispersed. The public order was disturbed. The second witness referred to an incident dtd.10th October, 2004. At about 7=30 p.m. the witness was present at his place of business, was approached by the petitioner and his accomplices with two motorcycle. The petitioner and his accomplices insisted the witness to purchase one of the two motorcycle and advance amount against the same to the petitioner. There were no papers for any of the motorcycles. The witness refused to purchase the motorcycle, and, therefore, he was beaten up by the petitioner and his accomplices in a public place. The crowd was gathered at the place but out of the fear and terror of the petitioner, the same was dispersed. The public order was also disturbed.

5. Relying upon the above material, the Detaining Authority came to the conclusion that the petitioner was engaged in antisocial and illegal activities of committing thefts and harassing innocent citizens. In view of the Detaining Authority, the petitioner was a dangerous person within the meaning of PASA Act. In view of the Detaining Authority, the petitioner was head strong person, ferocious and of violent temper and was also in habit of administering threats to the citizens and to beat them for executing his illegal activities. The Detaining Authority concluded that the dangerous activities of the petitioner were prejudicial to the maintenance of the public order and were required to be prevented forthwith. After considering the remedies available against the petitioner under the general law, the Detaining Authority reached to the subjective satisfaction that there was no other alternative except to detain the petitioner under the PASA Act. The Detaining Authority, therefore, passed the order of detention, as aforesaid, which is under challenge in this petition.

6. Learned Advocate Ms. Datta for learned Advocate Mrs. Mishra on behalf of the petitioner and learned AGP Ms.Punani for the respondents were heard at length. The affidavit in reply filed by the Detaining Authority as placed on record is also taken into consideration.

7. Out of various grounds urged on behalf of the petitioner and opposed and controverted by learned AGP, it appears that this petition can be examined and disposed of on the issue as to whether the detenu's right to make effective representation is infringed and that whether the detaining authority applied mind properly to the materials placed before him.

8. As contended on behalf of the petitioner in his representation made by the detenue to concerned authorities, on 23rd February, 2005, the detenu asked for a statement of witness Yuvraj Baburav in crime registered no.161/2003 and copy of the statement of witness Ram Avadh Laluprasad in crime registered no.163/2004 registered against the petitioner. On going through the grounds, it clearly appears that the detaining authority examined thoroughly investigation papers in the above said crimes and also took into consideration charge-sheet papers. Both the witnesses as mentioned above are shown as witnesses in both the charge-sheets. Learned Advocate for the petitioner makes statement that all the four cases were pending trial when the order of detention was served upon the detenu, but the copies of the statements of above said two witnesses, were not provided to the detenu while serving the charge-sheet upon him. It is undisputed fact that as demanded in the representation no such copies were provided to the detenu. Learned AGP on behalf of the respondents stated that so far as witness Yuvraj Baburav is concerned, in crime registered no.161/2003, his statement was not recorded.

9. Thus, the facts remain that some of the investigation papers were not provided to the detenu which were relied upon by the detaining authority. Undoubtedly, the detenu's right as guaranteed under Article 22 (5) of the Constitution of India, to make effective representation is infringed. Beside that if in crime registered no.161/2003 no statement of witness Yuvraj Baburav was recorded, then, the Detaining Authority took into consideration the charge-sheet papers wherein the said witness was cited as witness no.13. This reveals non-application of mind on the part of the Detaining Authority to the extent that though no statement was recorded during the investigation of a witness, the Detaining Authority took into consideration charge-sheet papers and took into consideration the fact that witness shown at sr.no.13 was a witness in the said case though it was not verified by the Detaining Authority whether his statement was recorded or not.

10. It is pertinent to note here a decision and observations of the Division Bench of this Court as reported at 1991 (1) GLH 342, wherein it is so held that it was incumbent upon the Detaining Authority to consider the statements recorded under Section 161 of the Code by the Police during the investigation of the offences for which the charge-sheets were already placed before him. In absence of the said statements, the subjective

satisfaction arrived at by the Detaining Authority vitiates and the whole order of detention was held vitiated.

11. In view of the above situation, the order challenged in this petition is required to be quashed and set aside on both the counts that firstly the detenu's right to make an effective representation is adversely affected in absence of providing the detenue the vital documents as stated above and non-application of mind on the part of the Detaining Authority in respect of charge-sheet papers submitted to him.

12. In the result, the petition is allowed. The order passed by the Police Commissioner, Surat City, on 11th of January, 2005, against the petitioner in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The petitioner-detenu PADAM KISHANCHAND NEPALI is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. Direct Service is permitted.

(J.R.VORA, J.)

12.05.2005
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